

VZCZCXRO2736
OO RUEHIK
DE RUEHS #0120/01 0320615
ZNR UUUUU ZZ
O 010615Z FEB 10 ZDK
FM USEU BRUSSELS
TO RUEHC/SECSTATE WASHDC IMMEDIATE
RUEATRS/DEPT OF TREASURY WASHDC IMMEDIATE
INFO RUCNMEM/EU MEMBER STATES COLLECTIVE PRIORITY
RUEAWJA/DEPT OF JUSTICE WASHDC PRIORITY
RHMFIUU/DEPT OF HOMELAND SECURITY WASHINGTON DC PRIORITY
RUEHZL/EUROPEAN POLITICAL COLLECTIVE

UNCLAS SECTION 01 OF 04 BRUSSELS 000120

SENSITIVE
SIPDIS

DEPT OR EUR, L, S/CT, EEB, INL
TREASURY FOR TFI

E.O.: 12958: N/A
TAGS: [PTER](#) [KTFN](#) [PGOV](#) [PREL](#) [PINR](#) [ETTC](#) [EAIR](#) [EFIN](#) [KCRM](#) [KJUS](#)
KHLs, EUN, NL, BE
SUBJECT: EU PARLIAMENT POISED TO VETO U.S.-EU CT TFTP AGREEMENT; PNR
ALSO IN DANGER

REF: 2009 USEU BRUSSELS 1283

BRUSSELS 00000120 001.4 OF 004

SENSITIVE BUT UNCLASSIFIED. Please handle accordingly.

1. (SBU) SUMMARY: The European Parliament is increasingly likely to veto the U.S.-EU Terrorist Financing Tracking Program (TFTP, also known as SWIFT) next week. There are two aspects to this action. First, members of the European Parliament do not feel that they know enough about the operational aspects of SWIFT to make a judgment on whether the program's enhancement of security justifies potential perceived compromises of EU data protection standards. Second, the European parliament wants to demonstrate its power to affect law enforcement issues, a power that it gained on December 1 with the coming into force of the Lisbon Treaty. Our U.S.-EU agreement on Passenger Name Record (PNR) may also be in jeopardy.

2. (SBU) The best we can probably hope for is a decision by the European Parliament to delay an up or down vote on approval of the interim TFTP agreement, signed by U.S. and EU Swedish Presidency officials on November 30, 2009 and scheduled to apply provisionally (before formal entry into force post-ratification) as of February 1, 2010 and expire no later than October 31, 2010. The Parliament could, in this scenario, allow the interim TFTP agreement to remain in force provisionally, pending a binding vote later in the year on either the interim agreement or a long-term version of the agreement yet to be negotiated. Members of the Parliament do not feel that they have enough information to cast an informed vote in favor of the TFTP, and that perception is working against us. Brussels USEU has been engaging members of the European Parliament to support the interim TFTP agreement, but substantial opposition remains. END SUMMARY.

OVERVIEW

3. (SBU) With the Lisbon Treaty's entry into force on December 1, the European Parliament (EP) acquired the power of co-decision with the European Council over a large number of international agreements, mainly in the fields of trade, security and justice. Seven international agreements, including two with the United States, were signed before December 1 but not yet finally ratified by the Council of the European Union, which comprises representatives of the EU's 27 member state governments. On January 25, the interim TFTP agreement was forwarded by the Council of the European Union to the EP for consideration and consent in the coming months. The PNR agreement will be forwarded in two weeks.

4. (SBU) The Parliament thus will soon decide the fate of two U.S.-EU agreements with direct implications for counter-terrorism cooperation: the Passenger Name Record (PNR) agreement and the interim Terrorist Finance Tracking Program (TFTP - often called SWIFT) agreement. As it provisionally enters into force on February 1, Members of the European Parliament (MEPs) have decided to accelerate consideration of the interim TFTP agreement. The TFTP agreement will come first before the Parliament's Committee on Civil Rights, Justice, Freedom and Security Affairs (LIBE) on February 4. Afterwards, there may be a full Parliament vote on the interim TFTP agreement on February 9. It will be difficult to secure EP consent to the PNR and TFTP agreements. Many MEPs allege they breach EU data privacy legislation and the European Charter of Human Rights. Even those who are not so skeptical on the privacy issue are uneasy that they do not know enough about how the TFTP and its SWIFT arrangements actually function. MEPs may also seek to make a point about their own lack of direct participation and influence over the negotiation of these agreements. Decision on the PNR agreement is expected in the spring 2010 plenary sessions.

EP Must Approve International Agreements

15. (U) The Lisbon Treaty's official title is "Treaty on the Functioning of the European Union," and is also known by its acronym, TFEU. An immediate consequence of Lisbon is the need for EP approval of most international agreements. The Lisbon Treaty provides that the EP be fully informed at all stages of negotiations of international agreements and give its consent to the formal conclusion of an agreement. However, this will not apply for agreements under the EU Foreign Security and Defense Policy, which will remain in the hands of the member states.

BRUSSELS 00000120 002.4 OF 004

TFTP/SWIFT Agreement

16. (SBU) On November 30, 2009, U.S. and Swedish EU Presidency officials signed the U.S.-EU agreement on the Processing and Transfer of Financial Messaging Data from the European Union to the United States for Purposes of the Terrorist Finance Tracking Program (TFTP). Their signature of this agreement occurred on the last day before the Lisbon Treaty entered into force. MEPs decried this last-minute signature, perceived as a move to avoid their Lisbon-granted oversight power that would come into effect the following day. (COMMENT: In fact, the November 30 signature was needed for pre-Lisbon Council decision-making legal structures; it did not prejudice EP prerogatives of consent as granted by the Lisbon Treaty and which the Parliament will now execute. END COMMENT.)

17. (SBU) The interim TFTP agreement will be provisionally applied (in the absence of a formal Parliament decision) beginning February 1, 2010 and expire no later than October 31, 2010. The agreement provides for EU and member state cooperation with the U.S. Treasury Department in furnishing European financial messaging data for counter-terrorism investigations, under conditions intended to ensure data protection. Although the financial messaging data companies that are subject to the agreement are not public, the media widely refer to the agreement as the "SWIFT" agreement. SWIFT, which stands for "the Society for Worldwide Interbank Financial Telecommunication," is a Belgian company that clears worldwide electronic financial transactions. It has moved storage of its European financial messaging data from the United States to Europe. A Council of the European Union declaration calls upon the European Commission to submit, no later than February 2010, a recommendation to the Council for the negotiation of a long-term agreement with the United States. (COMMENT: The more likely target date for the long-term negotiation mandate is March at the earliest, due to the delayed vote confirming the new College of Commissioners who would need to examine and decide on the issue. END COMMENT.)

18. (SBU) MEPs, at their first exchange of views on the issue on January 27, announced that a decision on the EP vote would be made in the LIBE (Civil Rights, Justice, Freedom, and Security) committee on February 4 and that the vote of the entire EP should take place during the February 9 Plenary session. LIBE nominated Jeanine Hennis-Plasschaert, a young Dutch Liberal MEP, known for her opposition to the agreement, as rapporteur to draft a motion. She will hold a meeting on Tuesday, February 2, to see if a majority view is already unfolding. While Jonathan Faull, the Commission's Director General for Justice and Home Affairs, tried to outline the importance of the interim agreement, the general mood among LIBE

col
In addition, granted (de-classification of the annexes), the MEPs received only a promise that they would be fully informed and involved in the negotiation and, of course, with no guarantee of results. (NOTE: The EP's September resolution had raised the question whether the agreement was incompatible with EU data privacy legislation. It stated that article 4 of the U.S.-EU agreement on mutual legal assistance, which will also enter into force on February 1, 2010, provides for U.S. access to targeted financial data upon request, which the EP believed to be a sounder legal basis for the transfer of data than the then-proposed interim TFTP agreement. The new U.S.-EU mutual legal assistance agreement (to be implemented through the U.S.-bilateral instrument) is the chosen mechanism in the interim TFTP agreement. However, it is not article 4, which is designed solely to provide prompt identification of accounts, but rather upon a broader request for mutual legal assistance of the new text that is employed in the interim agreement. END NOTE.)

PNR AGREEMENT

BRUSSELS 00000120 003.4 OF 004

10. (U) In May 2004, the Department of Homeland Security signed an

agreement with the Council of the European Union that would allow airlines to provide to the U.S. Customs and Border Protection (CBP) access to air Passenger Name Record (PNR) data originating within the EU, subject to carefully negotiated limitations. The EP never took a favorable view of this agreement. The Parliament even held several non-binding votes that challenged the PNR arrangement as a breach of European data privacy legislation. The EP even took this alleged case of privacy breach to the European Court of Justice (ECJ), which invalidated the original agreement in May 2006 as having been negotiated under the wrong EU Treaty decision-making structure.

11. (SBU) The ECJ granted a window with a stay of effect for U.S.-EU renegotiation of the agreement under a new legal authority, leading to a new agreement being signed in July 2007 and provisionally in effect since August 2007. In a non-binding resolution adopted in July 2007, the EP noted progress but outlined many problems in the PNR agreement's terms on data access, retention and transfer. This agreement, which was not yet fully ratified by three EU Member States' national parliaments pre-Lisbon, is now subject to the EP's co-decision procedure. Though provisionally applied, the agreement will be terminated should the EP decline its consent.

12. (SBU) The U.S. Secretary for Homeland Security, during her visit to the European Parliament's Civil Liberties, Justice and Home Affairs Committee (LIBE) on November 6, 2009, was asked by the PNR agreement's most vocal critic, MEP Dutch Liberal Sophie In't Veld, whether the U.S. was ready to re-negotiate the agreement. The Secretary noted that she was ready to set a date for the review of the PNR agreement, as required under the terms of the agreement. In't Veld was appointed rapporteur for this issue at the EP LIBE meeting of January 27.

NEXT STEPS/COMMENT

13. (SBU) If the EP denies its consent to the two agreements, on TFTP and PNR, the agreements will be terminated by the EU. After the January 27 debate on TFTP, it is clear that affirmative consent on TFTP will be difficult, if not impossible. Consent on PNR could be equally difficult. LIBE committee experts on these issues will try to get agreement. In the coming days, Brussels USEU will continue to meet with MEPs and other EU officials in order to attempt to gain support for the two agreements in Parliament.

15. (SBU) Possible scenarios in coming days, in order of likelihood, are: 1) MEPs go ahead with the vote on February 9 and vote NO - the agreement will be terminated and the U.S. will need to find an alternative mode of acquiring desired information on international financial transactions; 2) MEPs are promised, by U.S. and EU officials, access to evidence demonstrating that the TFTP program is bringing tangible results and that it conforms to their interpretation of EU data protection - in which case the Parliament decides to delay a vote while they acquire more information on the SWIFT program; 3) MEPs decide to delay their vote on consent for nine months, but adopt a non-binding resolution criticizing the legislative procedures and demanding concessions for the long-term negotiations (which is unlikely given media focus and the pent-up drive to exercise that power in the EP); 4) the EP delays its vote while seeking European Court of Justice preliminary guidance on the legality of the agreement; and 5) last-minute appeals from U.S. and EU officials succeed, with the Parliament approving both the PNR and interim TFTP agreements. Under all of the above scenarios, negotiations later this year on a successor agreement to the interim TFTP agreement will be difficult and highly charged.

BRUSSELS 00000120 004.4 OF 004

16. (SBU) In the coming days, we recommend that sustained engagement should stress the agreements' importance to the security of citizens in the U.S., Europe and elsewhere, while we explain the U.S. dedication and methodology of protecting individual privacy. We look forward to the forthcoming visit by U.S. Treasury officials during the week of February 1. The staff director of the LIBE committee also noted that an invitation to MEPs to visit and discuss these issues in the United States would be much appreciated, as would be any high-level official expert visits to the LIBE committee in Brussels.

KENNARD